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**BEFORE THE ARIZONA CORPORATION COMMISSION****COMMISSIONERS**

JEFF HATCH-MILLER, Chairman  
WILLIAM A. MUNDELL  
MARC SPITZER  
MIKE GLEASON  
KRISTIN K. MAYES

IN THE MATTER OF THE APPLICATION OF  
THE CITY OF SURPRISE TO UPGRADE AN  
EXISTING CROSSING OF THE BURLINGTON,  
NORTHERN AND SANTA FE RAILWAY AT  
BELL ROAD AND GRAND AVENUE, IN THE  
CITY OF SURPRISE, MARICOPA COUNTY,  
ARIZONA, AT AAR/DOT NO. 025-392-A.

DOCKET NO. RR-02635B-05-0283

DECISION NO. 67975**OPINION AND ORDER**

DATE OF HEARING: June 8, 2005

PLACE OF HEARING: Phoenix, Arizona

PRESIDING OFFICER: Marc E. Stern

APPEARANCES: Mr. Timothy Sabo, Staff Attorney, Legal Division, on  
behalf of the Utilities Division of the Arizona  
Corporation Commission.

**BY THE COMMISSION:**

On April 18, 2005, the City of Surprise ("City") filed with the Arizona Corporation Commission ("Commission") a request for an Opinion and Order for the approval of an agreement between the City and the Burlington Northern and Santa Fe Railway Company ("Railroad") to upgrade an existing crossing at the Railroad's tracks at Bell Road and Grand Avenue in Surprise, Arizona, at AAR/DOT No. 025-392-A ("Application").

On April 27, 2005, by Procedural Order, a hearing was scheduled for May 18, 2005. The City was ordered to provide public notice to the Railroad and any other municipality or interested party with a copy of the application and the Procedural Order by Certified Mail.

On May 18, 2005, the hearing was convened before a duly authorized Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. At the outset of the proceeding, counsel for the Commission's Railroad Safety Section indicated that the City had not provided public notice as ordered and requested that the proceeding be continued to a later date so that public notice could be provided by the City. By Procedural Order, the hearing was continued to June 18, 2005, and the

1 City was ordered to provide public notice.

2 On June 1, 2005, the City certified that it provided notice pursuant to the terms of the  
3 Procedural Order.

4 On June 8, 2005, a full public hearing was held before a duly authorized Administrative Law  
5 Judge of the Commission at its offices in Phoenix, Arizona. At the conclusion of the hearing, the  
6 matter was taken under advisement pending submission of a recommended Opinion and Order to the  
7 Commission.

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9 Having considered the entire record herein and being fully advised in the premises, the  
10 Commission finds, concludes, and orders that:

11 **FINDINGS OF FACT**

12 1. On April 18, 2005, the City filed an Application in which it requested an Opinion and  
13 Order from the Commission for the approval of an agreement between the City and the Railroad for  
14 the upgrade of a crossing by the City constructing a right turn lane and by the Railroad replacing  
15 existing flashing lights and to installing cantilever flashing LED light signals with opposing  
16 automatic gates at Bell Road, where it crosses Grand Avenue, AAR/DOT No. 025-392-A, in the City  
17 of Surprise, Arizona.

18 2. On June 1, 2005, the City filed certification that it provided notice by registered U.S.  
19 mail of the Application and hearing thereon.

20 3. A hearing was held as scheduled on June 8, 2005.

21 4. The Application provides for the Railroad to replace existing flashing lights and to  
22 install opposing automatic gates and cantilever flashing LED light signals.

23 5. Staff testified that the cost apportionment for the installation of the crossing upgrade  
24 as provided in the Application was proper.

25 6. Staff has recommended that the Application be approved.

26 **CONCLUSIONS OF LAW**

27 1. The Commission has jurisdiction over the parties and over the subject matter of the  
28 Application pursuant to Article XV of the Arizona Constitution and A.R.S. §§ 40-336, 40-337 and

1 40-337.01.

2 2. Notice of the Application was provided in accordance with the law.

3 3. Installation of the crossing upgrade is necessary for the public's convenience and  
4 safety.

5 4. Pursuant to A.R.S. §§ 40-336 and 40-337, the Application should be approved as  
6 recommended by Staff.

7 5. After installation of the crossing, the Railroad should maintain the crossing in  
8 accordance with A.A.C. R14-5-104.

9 **ORDER**

10 IT IS THEREFORE ORDERED that the City of Surprise's Application is hereby approved.

11 IT IS FURTHER ORDERED that the Burlington Northern and Santa Fe Railway Company  
12 shall complete the crossing upgrade as described in the Application within fifteen months from the  
13 effective date of this Decision.

14 IT IS FURTHER ORDERED that the Burlington Northern and Santa Fe Railway Company  
15 shall notify the Commission, in writing, within ten days of both the commencement and the  
16 completion of the crossing upgrade, pursuant to A.A.C. R14-5-104.

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IT IS FURTHER ORDERED that upon completion of the crossing upgrade, the Burlington Northern and Santa Fe Railway Company shall maintain the crossing in compliance with the A.A.C. R14-5-104.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

*Jeffrey M. Hobb-Nichols* CHAIRMAN *William M. Bell* COMMISSIONER

*Samuel S. Brown* COMMISSIONER *R. M. [Signature]* COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 18<sup>th</sup> day of July, 2005.

*[Signature]*  
BRIAN C. McNEIL  
EXECUTIVE SECRETARY

DISSENT \_\_\_\_\_

DISSENT \_\_\_\_\_

MES:mlj

1 SERVICE LIST FOR:

BURLINGTON NORTHERN AND SANTA FE  
RAILWAY COMPANY

2  
3 DOCKET NO.

RR-02635B-05-0283

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